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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,934

08/25/2003

Troy A. Dalsing

DALS001

3457

7590

05/16/2006

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EXAMINER

JOHNSON, JERROLD D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/647,934	Applicant(s) DALSING ET AL.	
	Examiner Jerrold Johnson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment is non-responsive due to the lack of any attempt to point out the patentable novelty. Per MPEP 714.04, the Examiner has examined the amended claims, despite the non-responsiveness of the amendment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-28 and 30-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muckenhirn EP 416164 in view of Kroupa US 6,435,339, Ostrowsky US 4,487,324 and May US 5,456,375.

Muckenhirn discloses the concept of a base unit 8 to which contact lens chambers are attached through the resilient snap fit of anchor tabs 6 into openings within the base unit.

Muckenhirn does not disclose a lid connected to the chamber through a flexible member (hinge), but instead discloses lids with a threaded connection to the chamber.

Kroupa discloses that threaded lids and hinged lids are known to be interchangeable in contact lens cases.

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Accordingly, one of ordinary skill in the art would recognize the suitability of a hinged lid for the container arrangement of Muckenhirn in place of his threaded lids.

Muckenhirn also does not disclose a tamper evident tear strip on his container assembly.

Bennett US 5,224,593 provides extrinsic evidence that tamper proof tear strips are known to be used in contact lens container.

Ostrówsky discloses the arrangement of a tear strip on a hinged lid where the lid includes a plurality of strip lock tabs, and the tear strip is disposed so that a plurality of openings are created between the tear strip and the remainder of the assembly. The tear strip prevents the tampering through the lid from being opened by someone other than the purchaser.

May in Figs. 13a-13d shows how the tear strip of Ostrowsky could also have been made with openings directly in the tear strip instead of being created by the tear strip. The tear strip arrangement of Man and Ostrowsky are equivalents of each other as they perform the identical function in substantially the same way so as to achieve substantially the same result.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide the contact lens container of Muckenhirn with a hinged lid and tear strip arrangement as is disclosed by Kroupa in view of the teachings of Ostrowsky and May, along with the teachings of the extrinsic evidence of Bennett, so as to prevent unwanted tampering of the container.

Re claim 22 and 23, Muckenhirn discloses a reverse of this arrangement.

Re claim 24, a threaded attachment of the chamber to the base unit is equivalent to that shown by Muckenhirn (snap fit).

Re claim 25-28 and 30, such agents and materials, shapes (concave and convex) and seals are all well known to be used in contact lens containers.

Re claim 31, the strength of the lid/chamber connection is a result effective variable that would have been obvious to one of ordinary skill in the art to optimize. Specifically, one of ordinary skill in the art would recognize that a contact lens container is subject to sterilization and needs to be built so as to accommodate this process.

Re claim 32-40, see the rejections above, as all of the subject matter set forth in these claims is noted within the above rejections.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Muckenhirn EP 416164 in view of Kroupa US 6,435,339, Ostrowsky US 4,487,324 and May US 5,456,375 and further in view of Haggin US 2004/0173474.

Muckenhirn EP 416164 in view of Kroupa US 6,435,339, Ostrowsky US 4,487,324 and May US 5,456,375 does not disclose a lid lock.

Haggin discloses a lid lock 102,114 in a hinged lid of a contact lens container.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify container of Muckenhirn et al. with the teachings of Haggin of a lid lock so as to allow the user to secure the lid on the chamber.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



Mickey Yu
Supervisory Patent Examiner
Group 3700